

## **CIVIL SERVICE COMMISSION MINUTES**

**July 17, 2002**

A special meeting of the Civil Service Commission was held at 10:00 a.m., in Rooms 302-303 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin  
Barry I. Newman  
Roy Dixon  
Mary Gwen Brummitt

Absent was:

Sigrid Pate

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
July 17, 2002

9:00 a.m.        CLOSED SESSION:    Discussion of Personnel Matters and Pending Litigation

10:00 a.m.    OPEN SESSION: Rooms 302-303, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
3, 4, 7, 8	10		5, 6

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Newman. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A.    Commissioner Austin: Richard Pinckard, Esq., on behalf of **Larry Bulow**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

B.    Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of: **Karen Abbott, Rosemarie Albano, Allen Alejandro, Lisa Almanza, Troy Batton, Allison Charles-Stahl, Arwen Emily Daum, Jessica De Mumbrum, Kelli Gibbs, Maribel Herrera, Nailah Kathrada, Jamie Lee, Josefina Munoz, Thanh My Nguyen, Paul Roberts, Bounma Sanmur, Ignacio Santos, Kalela Scott, Jonathan Wadley, Cedric Willis, Steven Yamasaki**, Correctional Deputy Probation Officers I; **Sharon Epps and Stacy Slaten**, Correctional Deputy Probation Officers II, appealing Orders of Removal and Charges from the Department of Probation.

**OFF DOCKET ITEM**

C.    Update from Legal Counsel - Existing Litigation. Superior Court's Final Order re **Joseph Diaz v. Civil Service Commission of the County of San Diego and San Diego Health and Human Services Agency**; Case No. GIC 788100.

**REGULAR AGENDA**  
**County Administration Center, Rooms 302-303**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

## MINUTES

1. Approval of the Minutes of the regular meeting of July 17, 2002.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

2. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Freida Sawyer**, former Detentions Nurse II, Sheriff's Department, appealing an Order of Termination and Charges from the Sheriff's Department.

**Confirmed.**

## DISCIPLINES

### Findings

3. Commissioner Austin: Richard Pinckard, Esq., on behalf of **Larry Bulow**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

### FINDINGS AND RECOMMENDATIONS:

Employee is charged with Cause I - conduct unbecoming an officer of the County of San Diego (comments made describing a young girl's breasts during a patrol shift briefing); Cause II - Conduct unbecoming an officer of the County of San Diego (referred to above comment at a subsequent meeting after being admonished); Cause III - Conduct unbecoming an officer of the County of San Diego (comments objectifying women); Cause IV - Conduct unbecoming an officer of the County of San Diego (derogatory comments about female supervisors); Cause V - Conduct unbecoming an officer of the County of San Diego (failure to stop derogatory comments toward women); Cause VI - Conduct unbecoming an officer of the County of San Diego; and Cause VII - Acts which are incompatible with and/or inimical to the public service.

Employee has been employed in the Department since 1968. At the time of his demotion, he was a Patrol Sergeant at the Encinitas Patrol Station. No record of prior discipline was presented. At the commencement of the hearing, the Department moved to close the hearing because the sexual harassment topic could result in embarrassment to certain witnesses. The hearing officer allowed closure during the testimony of the first three witnesses, and all parties agreed to use only initials in the report of findings. The charges in Cause I were proven (and were stipulated to) except for alleged hand gestures, which were not proven. The charges in Causes II, III, IV, V and VI were not proven. Charges in Cause VII merely refer to previous charges.

The senior officer in command (who made the decision to demote Employee) had previously brought a sexual harassment lawsuit against the Sheriff. She had accepted the word of two female deputies who made the accusations against Employee without ever interviewing him. It was well documented that the atmosphere at the substation was one in which sarcasm, questionable language, and the general conversation among the staff was uninhibited. The hearing officer found the disciplinary action of demotion to be clearly unwarranted.

An issue of timeliness arose at the hearing. Employee repeatedly criticized the approximate one-year time from the beginning of the investigation to his demotion. Moreover, Employee argued that the

period from the discovery of the incident of discipline to the demotion exceeded one year thereby violating Government Code Section 3304(d). The Department stated that its document entitled Notice of Proposed Disciplinary Action satisfied Section 3304(d). Although the hearing officer was concerned about the time it took the Department to investigate and process this matter, Government Code Section 3304(d) was not violated.

It is therefore recommended that Employee's discipline be reversed, and that he be restored to his previous rank with all back pay, interest and benefits from the effective date of the discipline to the date of this decision; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission read and file this report.

**Motion by Austin to approve Findings and Recommendations; seconded by Dixon. Carried.**

4. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of: **Karen Abbott, Rosemarie Albano, Allen Alejandro, Lisa Almanza, Troy Batton, Allison Charles-Stahl, Arwen Emily Daum, Jessica De Mumbrum, Kelli Gibbs, Maribel Herrera, Nailah Kathrada, Jamie Lee, Josefina Munoz, Thanh My Nguyen, Paul Roberts, Bounma Sanmur, Ignacio Santos, Kalela Scott, Jonathan Wadley, Cedric Willis, Steven Yamasaki**, Correctional Deputy Probation Officers I; **Sharon Epps and Stacy Slaten**, Correctional Deputy Probation Officers II, appealing Orders of Removal and Charges from the Department of Probation.

#### FINDINGS AND RECOMMENDATIONS:

Employees were charged with Cause 1 - Dishonesty (False information in records); Cause 2 - Negligence resulting in significant risk of harm to the public service (failure to perform all required hall checks); Cause 3 - Conduct unbecoming an officer of the Probation Department and an employee of the County of San Diego; Cause 4 - Failure of good behavior.

The hearing was held on June 10, 12 and 14, 2002. A pre-hearing conference was held on March 18, 2002 wherein the parties agreed to consolidate the Appellants' appeals. A post-hearing conference was held on July 3, 2002 to consider adding seven more appellants to this hearing. At the re-opened hearing on July 3, 2002, the parties verbally stipulated to include all previous testimony and evidence.

Employees and the Department entered the following factual stipulations: (A) That each employee received formal training; (B) that such formal training included the requirement to perform hall checks every 15 minutes and the justification and necessity of checks in order to protect the health and welfare of the wards; (C) that, with minor variances, Employees failed to perform the hall checks specified in the Department's orders and charges; (D) that, with minor variances, the Employees falsely recorded the foregoing hall checks as completed; (E) that the Employees' conduct at issue in this appeal was inconsistent with Department policy and procedure; and (F) that Employees merited some level of discipline.

However, Employees clarified that they did not stipulate that their false recording of hall checks was with dishonest intent. Rather, Employees' defense was that the practice within the Department was to assure that their records demonstrated compliance with the hall check requirements even if such compliance had not been achieved. Also, that the Department supervisors approved and encouraged the practice, and that at least to some extent, it was common practice at the Juvenile Hall.

The Department's evidence and testimony at the hearing was substantial. Additionally, the Department presented circumstantial evidence that Employees were acutely aware that they were engaged in misconduct that they were trying to hide from their supervisors. Employees' evidence of Departmental approval consisted of implication and innuendo through the alleged presence of supervisors during incidents of falsification. There was no convincing evidence of supervisorial complicity in their practice of falsifying.

The dishonesty causes related to the falsification of hall checks may have been the overriding consideration by the Department in terminating Employees. The hearing officers concluded that Employees' failure to make the hall checks was of equal weight and concern and equally deserving of a major discipline, and that the Probation Department cannot tolerate such egregious behavior and cannot risk similar behavior in the future.

The hearing officers found the Employees guilty of Causes I, II, III and IV. It is therefore recommended that the Order of Removal be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission read and file this report.

**Motion by Brummitt to approve Findings and Recommendations;  
seconded by Newman. Carried.**

## **DISCRIMINATION**

### **Complaints**

5. Wendell Prude, S.E.I.U. Local 2028, on behalf of **Stacie Neldaughter**, Staff Nurse, Health and Human Services Agency (HHSA), alleging sexual orientation discrimination by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Withdrawn.**

## **SELECTION PROCESS**

### **Complaints**

6. **Edward del Toro**, Equipment Operator, Department of Public Works (DPW), appealing his non-selection for the classification of Senior Equipment Operator by DPW.

RECOMMENDATION: Withdrawn.

**Withdrawn.**

7. **Damon Colclough**, Protective Services Worker II, HHSA, appealing his non-selection for the classification of Protective Services Supervisor by the HHSA. (See No. 8 below.)

RECOMMENDATION: Deny Request.

Appellant was deemed by DHR to have met minimum qualifications and was placed on an employment list for consideration by HHSA. Unfortunately, Mr. Colclough did poorly on the questions relating to assessment skills

and time management and confrontation. He asked the Commission to conduct a Rule X hearing, as well as conduct a Rule XI investigation into DHR's and HHSA's administration of Civil Service Rules 3.1.11 and 3.1.12 (No. 8 below).

Lynette Mercado, Personnel Manager for HHSA, responded to both matters. She explained that the Agency required candidates to complete a writing exercise followed by an interview with two managers. The interviewers were one point apart in their scoring of Appellant and his combined final score was significantly below the passing point of 70.

The Commission asked Ms. Mercado questions on procedure regarding review of testing materials by candidates. She explained that the rules provide for extensive review by candidates as a result of written instruments such as multiple choice exams. However, the rules do not provide for full disclosure of testing results relating to such things as interviews. Ms. Mercado further explained that HHSA gave Appellant a general description of his testing results, including his shortcomings in the above-stated subjects.

**Motion by Brummitt to accept staff recommendation; seconded by Dixon. Carried.**

## **INVESTIGATIONS**

### **Complaints**

8. **Damon Colclough**, Protective Services Worker II, HHSA, requesting a Civil Service Rule XI investigation into the Department of Human Resources' and HHSA's administration of Civil Service Rules 3.1.11 and 3.1.12 regarding the review of testing material. (See No. 7 above.)

RECOMMENDATION: Deny Request.

See No. 7 above.

**Motion by Brummitt to accept staff recommendation; seconded by Dixon. Carried.**

9. Public Input.

### **OFF DOCKET ITEM**

10. Commissioner Pate: Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Joseph Diaz**, former Protective Services Worker II, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSA).

**Continued.**

ADJOURNMENT: 11:15 a.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE July 26, 2002.**